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No. 80-988

In the Supreme Court of the United States

OCTOBER TERM, 1980

HAVENS REALTY CORPORATION, ET AL., PETITIONERS

v.

SYLVIA COLEMAN, ET AL.

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FOURTH CIRCUIT

BRIEF FOR THE UNITED STATES AS AMICUS CURIAE

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QUESTION PRESENTED

The United States will discuss the question whether a tester who receives false information from a realty company about the availability of housing has standing to sue under Sections 804(d) and 812 of the Fair Housing Act of 1968 (42 U.S.C. 3604(d) and 3612).

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INTEREST OF THE UNITED STATES

Congress enacted the Fair Housing Act of 1968, 42 U.S.C. 3601 *et seq.*, to implement the "policy of the United States to provide, within constitutional limitations, for fair housing throughout the United States." 42 U.S.C. 3601. While the Department of Housing and Urban Development and the Attorney General have important responsibilities under the Act (see 42 U.S.C. 3610, 3612), complaints by private persons remain the principal means of securing compliance with the fair housing provisions. Accord-

ingly, the United States has a substantial interest in this case, where the issue concerns the class of persons entitled to prosecute complaints under the Act. The United States participated as amicus curiae in *Trafficante* v. *Metropolitan Life Insurance Co.*, 409 U.S. 205 (1972), and *Gladstone, Realtors* v. *Village of Bellwood*, 441 U.S. 91 (1979), both of which also concerned standing under the Fair Housing Act.

STATEMENT

A. The Testers' Suit

On January 9, 1979, three individual plaintiffs—Paul Allen Coles, Sylvia Coleman, and R. Kent Willis—and one organizational plaintiff, Housing Opportunities Made Equal ("HOME"), filed a class action suit against Havens Realty Corporation and one of its employees, Rose Jones ("Havens"), in the United States District Court for the Eastern District of Virginia, alleging that Havens had denied housing on the basis of race and engaged in "racial steering" in violation of the Fair Housing Act of 1968, 42 U.S.C. 3601 *et seq.*, and the Civil Rights Act of 1866, 42 U.S.C. 1982 (J.A. 11-20).[1]

Havens operates two apartment complexes, Camelot Townhouse Apartments and Colonial Court Apartments, in Henrico County, Virginia, a suburb

[1] The complaint alleged the class consisted of "all persons who have rented or sought to rent residential property in Henrico County, Virginia, and who have been, or continue to be, adversely affected by the acts, policies and practices" of Havens (J.A. 12). The complaint charged that Havens engaged in "steering" by showing apartments in a building occupied primarily by whites only to white applicants and refusing to show those apartments to blacks, while directing blacks to rental units in a "less racially segregated [white] building" (J.A. 15).

of Richmond (J.A. 14). The complaint described Coles, who is black, as a "renter plaintiff" and alleged that on July 13, 1978, Coles inquired about the availability of an apartment at the Camelot complex (predominantly occupied by whites) and Havens falsely informed him that no apartments were available (J.A. 15-16).

The complaint described Sylvia Coleman as a "black tester" and R. Kent Willis as a "white tester," who were employed by HOME to determine whether Havens practices racial steering (J.A. 13). According to the complaint, Coleman and Willis each made inquiries of Havens on March 14, March 21, and March 23, 1978, about the availability of apartments, and on each of those occasions Coleman was told that nothing was available and Willis was told that apartments were available (J.A. 16-17). On July 6, 1978, Havens again told Coleman there were no vacancies, while giving contrary information to a white tester (*ibid.*).

Coles and Coleman claimed that Havens' steering practices denied them the right to rent property,[2] and all three individual plaintiffs claimed that those practices deprived them of the advantages and benefits that arise from living in an integrated community (J.A. 17). HOME alleged that Havens' racial steering practices frustrated its efforts to provide equal access to housing through counseling and other referral services (*ibid.*), and that its members had been individually injured by being deprived of the benefits of living in an integrated community (J.A. 18). The complaint sought declaratory and injunc-

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[2] Coles and Coleman based their claims on 42 U.S.C. 1982, as well as the Fair Housing Act of 1968 (J.A. 17).

tive relief against Havens (J.A. 18-19); it also sought actual and punitive damage awards for Coles, Coleman and Willis, as well as HOME's testing expenses and costs and attorneys' fees (J.A. 20).

Havens filed a motion to dismiss the complaint (J.A. 21-25). The district court granted the motion on February 16, 1979, as to all claims except renter plaintiff Coles' claim based on the July 13, 1978 incident (J.A. 33-35). The court dismissed Coleman, Willis and HOME as plaintiffs for lack of standing (J.A. 34), and concluded that only the July 13 incident was within the 180 day statute of limitations of 42 U.S.C. 3612(a) (J.A. 33).

Plaintiffs appealed. On September 18, 1980, the court below reversed the district court's judgment and remanded the case for further proceedings (J.A. 63). The court of appeals concluded that Willis and Coleman have standing both as testers and as persons deprived of the benefits of residing in an integrated community, and that HOME has standing both as a representative of its injured members and on the basis of its own injury from racial steering (J.A. 68). The court also held that none of the incidents of steering was time-barred, because the final act of Havens' continuing violation of the Fair Housing Act occurred less than 180 days before the complaint was filed (J.A. 79).

B. Coles' Suit

While the testers' case was on appeal, renter plaintiff Coles' case went to trial and the district court found that Havens had engaged in unlawful racial steering. On February 17, 1981, the district court approved a consent judgment, enjoining Havens from violating the Fair Housing Act and Section 1982 and requiring Havens for a three-year period: (a) to

maintain and display accurate information regarding the availability of its rental properties; (b) to make available to all applicants for apartments a statement of its criteria and procedures for approving applications; (c) to maintain and regularly submit to the Virginia Real Estate Commission ("Commission") records concerning the race of all persons who visit its rental offices seeking information; (d) to make available to HOME (through the Commission) copies of rental applications or executed leases; and (e) to display notices, posters and symbols identifying itself as "an equal housing opportunity realtor" (App. A, *infra*).[3] The consent judgment also awarded damages to Coles and to members of the class he represented.

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[3] The complaint filed by Coles, the testers, and HOME sought an injunction requiring Havens to take affirmative action to overcome the effects of past discrimination, including (J.A. 19):

> (i) the soliciting and encouraging of blacks to rent units in predominantly white communities and whites to rent units in predominantly black and integrated communities;
>
> (ii) the adequate advertising in appropriate publications and circulation of information concerning apartments available in defendants' files;
>
> (iii) the adoption of a uniform system of rules, regulations, codes, etc., together with enforcement procedures, designed to ensure that defendants' past discriminatory actions are not repeated or continued, including the adoption of a policy of hiring personnel in its real estate office without regard to race; and
>
> (iv) the prompt reporting in written form by defendants of such information as the Court deems necessary to enable the efficient monitoring of the defendants' compliance with other parts of the Court's order and the Fair Housing Laws of the United States * * *.

SUMMARY OF ARGUMENT

Respondents' claims against Havens may be moot as a result of the entry of the consent judgment granting both injunctive relief and class-wide damages in renter Coles' case. In any event, petitioners are already under a court order to terminate their discriminatory practices and relief has been awarded the class harmed by their practices. Accordingly, this Court's resolution of the merits of their contentions will have little, if any, effect on the parties. Moreover, petitioners do not question the use of testers as witnesses to provide evidence in housing discrimination suits; such evidence is often vital to establish violations of the Fair Housing Act. In light of these considerations, the Court may wish to consider dismissing the writ as improvidently granted.

If the Court chooses to reach the merits, we believe that the right conferred by Section 804(d) not to be given false housing information because of race is not limited to bona fide purchasers and renters, but extends to "any person" seeking such information, including both individual testers and organizations.

ARGUMENT

I. THIS COURT MAY WISH TO CONSIDER WHETHER THE WRIT OF CERTIORARI SHOULD BE DISMISSED

The consent judgment entered by the district court in *Coles* v. *Havens Realty Corp., et al.*, on February 17, 1981, enjoined petitioners' steering practices, and awarded damages to Coles and his class. It is arguable that the *Coles* consent judgment has provided respondents with full relief and thus rendered the instant case moot.

The consent judgment enjoins petitioners from future violations of the Fair Housing Act, the primary equitable relief sought by respondents (see J.A. 18-

19). While the order does not include all the affirmative measures suggested in respondents' complaint, *e.g.*, solicitation of blacks to rent in buildings occupied predominantly by whites and of whites to rent in buildings occupied predominantly by blacks and in integrated buildings (J.A. 19), it does establish procedures for monitoring petitioners' compliance with the law, including making relevant information available to HOME (App. A, *infra*, 4a-6a). The consent order thus provides essentially the injunctive relief sought in the complaint.[4]

The consent order also establishes a fund to provide damages to "all claimants" who "sought housing information" but were informed that apartments were not available (App. A, *infra*, 6a-7a). Although respondent Coleman, the black tester, may be a "claimant" entitled to participate in that fund,[5] Willis, the white tester, clearly is not.[6]

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[4] It is, moreover, doubtful that a district court ordinarily would, at the behest of testers, expand upon relief granted to a would-be renter and the class he represents.

[5] The certified class includes "all black persons who may have been injured monetarily by the alleged racial steering practices * * * since 9 January 1977" (App. B, *infra*, 11a). Since the district court had previously dismissed the complaint as to the tester plaintiffs on the ground that they "assert no more than the general public interest" (J.A. 34), it apparently did not believe the testers had been "injured monetarily", and intended the class to include only *bona fide* renters. It is not clear whether the court or the parties also intended the "claimants" to be so limited. Nor is it clear whether HOME could be considered a "claimant" who "sought housing information" through tester Coleman. In any event, we are informed by respondents' counsel that none of the respondents sought to recover from the fund.

[6] Respondents also sought costs, attorney's fees, and HOME's expenses for testing and monitoring Havens' prac-

Even if the remaining subsidiary claims suffice to prevent this case from meeting the "stringent" test for mootness (*United States* v. *Phosphate Export Ass'n*, 393 U.S. 199, 203 (1968)), the intervening consent decree greatly reduces the practical importance of the respondents' claims.[7] In these circumstances, as in *Taggart* v. *Weinacker's, Inc.*, 397 U.S. 223, 224-225 (1970), the Court may appropriately conclude:

> While the changed circumstances do not necessarily make the controversy moot, they are such that, if known at the time the petition for a writ of certiorari was acted upon, we would not have granted it. For such small embers of controversy that may remain do not present * * * [any] conflict that we need sit to resolve.

Cf. *United States* v. *W.T. Grant*, 345 U.S. 629 (1953) (although corporate director's resignation from interlocking directorships did not moot challenge to legality under Clayton Act of holding such positions, it did justify district court's refusal to issue an injunction, so that Court did not reach merits of Clayton Act claim).[8]

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tices. J.A. 20. The consent judgment awarded Coles' counsel—the same counsel who represents respondents—$17,500 as attorney's fees (App. A, *infra*, 9a).

[7] The practical importance of these claims is further reduced by the Virginia Real Estate Commission's 6-month suspension of the Broker's license of Arthur E. Havens, Jr., on the basis of the discriminatory housing practices of Havens Realty Corporation adjudicated in *Coles* v. *Havens Realty Corp.*, *supra*. Equal Opportunity Housing (P-H) ¶ 18,033 (E.D. Va. Aug. 25, 1981).

[8] Commentators have also recognized that "mootness decisions frequently reflect avowedly flexible doctrines of remedy and judicial administration". 13 C. Wright, A. Miller, &

For these reasons, the Court may conclude that this case presents an inappropriate context in which to decide the question of the standing of testers under the Fair Housing Act that this Court expressly reserved in *Gladstone, Realtors* v. *Village of Bellwood*, 441 U.S. 91, 111 (1979).[9]

H. Cooper, *Federal Practice and Procedure: Jurisdiction* § 3533, at 266 (1975); accord, Note *Mootness in the Supreme Court*, 88 Harv. L. Rev. 373, 377-378 (1974). Cf. R. Stern & E. Gressman, *Supreme Court Practice* ¶ 18.1, at 885 (5th ed. 1978).

[9] As amici Lawyers' Committee for Civil Rights Under Law, *et al.* note (Br. 11-13), the timeliness issues in this case are intertwined with the standing issues. The court of appeals found that petitioners' steering practices constituted a continuing violation that extended into the 180-day limitation period in 42 U.S.C. 3612(a) (J.A. 41-43). Title VII has a similar 180-day limitation period for bringing charges of discrimination in employment (42 U.S.C. 2000e-5(e)), and the courts have consistently upheld the timeliness of complaints alleging a continuing practice of employment discrimination when the complaint is filed within 180 days of the last challenged discriminatory act. See, *e.g.*, *Guardians Ass'n of the New York City Police Dep't, Inc.* v. *Civil Service Commission of the City of New York*, 633 F.2d 232, 251 (2d Cir. 1980); *Acha* v. *Beame*, 570 F.2d 57, 65 (2d Cir. 1978); *Wetzel* v. *Liberty Mutual Insurance Co.*, 508 F.2d 239, 246 (3d Cir.), cert. denied, 421 U.S. 1011 (1975); *Gonzalez* v. *Firestone Tire & Rubber Co.*, 610 F.2d 241 (5th Cir. 1980). The continuing violation theory is not limited to situations in which the plaintiffs have a continuing employment relationship with the defendants; it has also been applied to allow otherwise time-barred claims of class members discriminatorily refused employment. See, *e.g.*, *Macklin* v. *Spector Freight Systems, Inc.*, 478 F.2d 979, 987 (D.C. Cir. 1973); *Kohn* v. *Royall, Koegel & Wells*, 59 F.R.D. 515, 518 (S.D.N.Y. 1973), appeal dismissed on other grounds, 496 F.2d 1094 (2d Cir. 1974). Because the same broad remedial purposes underlie the Fair Housing Act and Title VII, it is appropriate to interpret the similar statute of limitations in

II. CONGRESS HAS VALIDLY PROVIDED THAT "ANY PERSON" HAS A RIGHT TO TRUTHFUL INFORMATION ABOUT HOUSING AVAILABILITY AND MAY SUE FOR VIOLATION OF THAT RIGHT

On the merits of the standing issue, we submit first, that it is important to recognize that this case involves only the question whether suits challenging steering practices may be brought by testers, or by fair housing organizations on the basis of tester information. It does not cast any doubt on the use of testers to collect evidence of steering, or on the admissibility of that evidence in suits brought by bona fide seekers of housing or by residents of the affected community. See, *e.g.*, *Gladstone, Realtors* v. *Village of Bellwood*, *supra*, 441 U.S. at 97-98. In such suits, the admissibility of tester evidence to show a pattern of discriminatory practices does not depend on whether the testers themselves have standing to sue or whether a suit by them would be timely (see note 9, *supra*).

While others may have a broader basis for standing, a tester, as a "person", is among those on whom

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the Fair Housing Act as also providing for a continuing violation theory to preserve the class-based claims of would-be renters or residents whose living environment has been affected, both of whom, like Title VII plaintiffs, suffer continuing effects from the challenged discriminatory course of conduct. It is less clear that the continuing violation concept should be available to testers whose standing is based only on the violation of their right under 42 U.S.C. 3604(d) to receive truthful information in response to specific inquiries about the availability of housing at a particular time. Cf. *Laffey* v. *Northwest Airlines, Inc.*, 567 F.2d 429, 473 (D.C. Cir. 1976), cert. denied, 434 U.S. 1086 (1978) (former employees, separated in time-barred period, not allowed to rely on continuing violation theory). We assume for the purposes of this brief, however, that respondents' claims are not time-barred.

the Fair Housing Act confers a legal right to truthful information about available housing and for whom the Act provides a judicial remedy where that right is abridged. Section 804(d) (42 U.S.C. 3604 (d)) provides that it is unlawful for a real estate agency:

> [t]o represent to any person because of race, color, religion, sex, or national origin that any dwelling is not available for inspection, sale, or rental when such dwelling is in fact so available.

In Section 812(a) (42 U.S.C. 3612(a)) Congress provided an explicit cause of action for such violations:

> The rights granted by sections 803, 804, 805 and 806 of this title may be enforced by civil actions in appropriate United States district courts without regard to the amount in controversy and in appropriate State or local courts of general jurisdiction.

In light of this clear statutory language, it is evident that a tester who is falsely informed that no housing is available has a statutory cause of action to challenge steering.[10]

Section 804(d) contains no limiting language similar to the requirement in Section 804(a) of a "bona fide offer" to rent or purchase (42 U.S.C. 3604(a)). Instead, it broadly bans discriminatory representa-

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[10] Although the complaint here asserts that the testers have been deprived of the "important social, professional, business and economic, political and aesthetic benefits of inter-racial associations that arise from living in integrated communities free from discriminatory housing practices" (J.A. 17), it also asserts that the "action arises under 42 U.S.C. * * * § 3604" (J.A. 12). This assertion is sufficient to allege standing under Section 3604(d) as well as Section 3604(a).

tions to "any person".[11] This wide scope reflects the congressional design to provide in Section 804 an effective tool for a comprehensive attack on housing discrimination by banning a "broad range of discriminatory practices," *Jones* v. *Alfred H. Mayer Co.*, 392 U.S. 409, 417 (1969), that may be sophisticated as well as crude. *United States* v. *Real Estate Development Corp.*, 347 F. Supp. 776 (N.D. Miss. 1972). Thus, Section 804 reaches not only direct discriminatory refusals to sell or rent (804(a)) and discrimination in the terms and conditions of sale or rental (804)(b)), but also more subtle ways of limiting the availability of housing for racial reasons, *e.g.*, through racial advertising (804(c)), false representations of unavailability (804(d)), or "blockbusting" (804(e)). In order to ensure that housing would not be discriminatorily denied, Congress concluded that it was necessary to prohibit not only the outright denial itself, but also actions that lead directly or indirectly to the maintenance of segregated housing, such as misrepresentations of unavailability.

The legislative history of the Act reflects Congress' awareness of the use of misrepresentations of un-

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[11] It is not necessary to show a "need" for the housing information. The right accorded by 42 U.S.C. 3604(d) is analogous to that created by the Freedom of Information Act, 5 U.S.C. 552(a)(3), making certain government documents available to "any person" who requests them. This Court has held that a plaintiff suing for the release of such material is not required to show any need for it. *EPA* v. *Mink*, 410 U.S. 73, 79, 86 (1973); *NLRB* v. *Sears, Roebuck & Co.*, 421 U.S. 132, 149 (1975).

Similarly, the Truth in Lending Act requires certain disclosures by creditors to "each person" to whom credit is extended (15 U.S.C. 1631(a) and 1640(a)); a debtor accordingly has standing to sue whether or not he was misled by the nondisclosure. *White* v. *Arlen Realty & Development Corp.*, 540 F.2d 645, 649-650 (4th Cir. 1975).

availability as one means of maintaining segregated housing. Various witnesses testifying in August 1967 before the Senate Subcommittee on Housing and Urban Affairs, which was considering the original version of the Fair Housing Act, recounted incidents where black persons seeking housing were falsely informed that housing was not available. See *Fair Housing Act of 1967: Hearings on S. 1358, S. 2114, and S. 2280 Before the Subcomm. on Housing and Urban Affairs of the Senate Comm. on Banking and Currency*, 90th Cong., 1st Sess. 99 (1967) (testimony of Roy Wilkins); 204, 206 (testimony of Gerard A. Ferere); 497 (testimony of Whitney M. Young, Jr.). See also 114 Cong. Rec. 2541 (1968) (remarks of Senator Percy).[12]

The purpose of extending the protection of Section 804(d) beyond bona fide renters or purchasers to "any person" is clear. To violate that provision is to deny housing by subterfuge, and victims of that subterfuge will not readily detect it; their preoccupation with finding a place to live makes it impractical to investigate every representation of unavailability. In

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[12] Congress was also concerned about the psychological impact on the individual of racial discrimination in housing, recognizing that suffering racially invidious treatment is itself an injury. See, *e.g.*, 114 Cong. Rec. 2274, 2278, 2281 (1968).

Senator Brooke explained the effects on black Americans (*id.* at 2282):

> I have seen the impact upon them, and I know very well what they mean when they say, "it is not just the fact that I am the last hired and the first fired; it is not even the bad conditions under which I am forced to live; but it is that I do not feel like a man, that I am denied the right to feel, to act, and to stand as a man, to live with human dignity. That is what is most important to me. I want to feel like a man. I want to act like a man. I want to live in dignity."

Section 804(d), therefore, Congress concluded that the only effective way to ensure that persons in need of housing are not deceived is to ban racially motivated misrepresentations of unavailability to *any* person.[13]

Petitioners do not challenge the statutory standing of the tester respondents and HOME. They contend only that the tester respondents and HOME failed to satisfy the minimal constitutional requirements for standing, asserting that they failed to show a distinct and palpable injury to their own rights that is substantially likely to be redressed by the relief requested (Br. 22). This Court has frequently recognized that Congress can create legal rights, the invasion of which creates standing, even though there would be no standing without the statute. *Sierra Club* v. *Morton*, 405 U.S. 727, 732 n.3 (1972); *Linda R.S.* v. *Richard D.*, 410 U.S. 614, 617 (1973). As the Court recognized in *Warth* v. *Seldin*, 442 U.S. 490, 512-514 (1975), that is precisely what Congress has

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[13] Section 802(d) of the Act defines "person" to include "corporations," "partnerships," and "associations," as well as individuals. 42 U.S.C. 3602(d). Thus, a fair housing organization such as HOME would have standing to challenge racial steering, at least if the false representations of unavailability were made directly to the organization or to a person known to be acting on its behalf.

HUD provides informal conciliation procedures under Section 810 of the Fair Housing Act. See *Gladstone, Realtors* v. *Bellwood, supra*, 441 U.S. at 103-109. Complaints under this section generally are filed by individuals seeking housing. HUD has also acted on complaints by organizations like HOME acting on the basis of steering evidence disclosed by testers, but is not aware of instances in which it has acted on complaints by individual testers. Consistently with the views expressed in this brief, however, HUD would accept complaints alleging Section 804(d) violations from organizations or individual testers.

done here. As noted *supra*, the statutory rights created by 42 U.S.C. 3604 are not only to rent or purchase housing without suffering discrimination, but also to receive truthful information about available housing. There can be no doubt that petitioners denied the black tester such information, and thus inflicted a direct and palpable injury to that statutorily created right.[14] That injury is sufficient to satisfy the "Art. III minima" of the constitutional standing requirement (*Gladstone, Realtors* v. *Village of Bellwood, supra*, 441 U.S. at 100).

It is constitutionally irrelevant whether the injury is judicially perceived as significant, since " 'an identifiable trifle is enough for standing to fight out a question of principle; the trifle is the basis for standing and the principle supplies the motivation.' " *United States* v. *SCRAP*, 412 U.S. 669, 689 n.14 (1973), quoting Davis, *Standing, Taxpayers and Others*, 35 U. Chi. L. Rev. 601, 613 (1968). In any event, the interest in being free of the psychological impact of the racial discrimination inherent in the false denial that apartments are available is at least as significant as the "aesthetic and environmental well being" that the Court recognized as a sufficient constitutional basis for standing in *Sierra Club* v. *Morton, supra*, 405 U.S. at 734, and *United States* v. *SCRAP, supra*, 412 U.S. at 686. Moreover, as the court of appeals noted (J.A. 69-70), it is constitu-

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[14] If given false information, an organization like HOME might also suffer palpable injury if racial steering practices such as petitioners' impeded efforts like HOME's to provide counseling and referral services to those seeking integrated housing in the target area by limiting the supply of such housing (See J.A. 17). That is a distinct injury to the organization itself, and not merely harm to its abstract interest in equal housing. Compare *Simon* v. *Eastern Kentucky Welfare Rights Organization*, 426 U.S. 26, 40 (1976).

tionally irrelevant that a complainant intentionally exposed himself to the injuries of which he complains for the purpose of testing petitioners' actions. *Evers* v. *Dwyer*, 358 U.S. 202 (1958); *Pierson* v. *Ray*, 386 U.S. 547 (1967).[15]

CONCLUSION

This Court may wish to consider dismissing the writ as improvidently granted. Otherwise, its opinion should reflect that the Act validly confers a right on "any person" to secure truthful information on housing availability and to sue for violation of that right.

Respectfully submitted.

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EDWARD G. WEIL
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Department of Housing and Urban Development

SEPTEMBER 1981

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[15] Because petitioners themselves gave false information in violation of 42 U.S.C. 3604(d), this case does not involve the sort of indirect injury that the Court has noted "may make it substantially more difficult to meet the minimum requirement of Art. III: to establish that, in fact, the asserted injury was the consequence of defendants' actions, or that prospective relief will remove the harm." *Warth* v. *Seldin*, *supra*, 422 U.S. at 505; see also *Simon* v. *Eastern Kentucky Welfare Rights Organization*, *supra*, 426 U.S. at 44-45; *Linda R.S.* v. *Richard D.*, *supra*.

APPENDIX A

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF VIRGINIA
RICHMOND DIVISION

Civil Action No. 79-0024

PAUL ALLEN COLES, PLAINTIFF

v.

HAVENS REALTY CORPORATION,
a Virginia corporation and
ROSE JONES, DEFENDANTS

Filed Feb. 17, 1981

CONSENT ORDER

This is a class action brought by the named plaintiff under the Fair Housing Act of 1968, 42 U.S.C. §§ 3601 *et seq.* and the Civil Rights Act of 1866, 42 U.S.C. § 1982. The Complaint alleges that the defendants have engaged in acts, policies, and patterns of denying housing on the basis of race or color and of preserving and encouraging patterns of racial segregation in available housing by denying apartments to black persons or by "steering" black persons to selected buildings and away from other buildings and by steering white persons to certain selected buildings. Such acts, policies, patterns and practices are in direct violation of the above-referenced statutes.

On February 13, 1980, pursuant to Rule 23(b)(2) of the Federal Rules of Civil Procedure, the Court certified a class composed of all black persons who may have been injured monetarily by the alleged racial steering practices of the defendants on or since January 9, 1977. Plaintiff Paul Allen Coles was designated to act as representative for this class. The Court also certified a subclass composed of all black persons who may have been injured monetarily by the alleged racial steering practices of the defendants on or since July 13, 1978. Plaintiff Paul Allen Coles was designated to act as representative for this subclass. Notice to prospective class members, as they could best be ascertained from the defendants' records, was mailed on or about May 15, 1980.

The trial of the case of *Paul Allen Coles v. Havens Realty Corporation, et al.* was held in this Court on June 22 and 23, 1980. The Court finds from the evidence presented in this case that the policies and acts of the defendants Havens Realty Corporation and Rose Jones violated the provisions of the Fair Housing Act of 1968 and the Civil Rights Act of 1866.

The parties are desirous of resolving this matter, including resolution of any remaining issues to be determined by this Court without the time and expense of further litigation, and whereas the defendants hereby agree to comply with the terms and provisions of this Order, and to dismiss the appeal of this action to the Fourth Circuit Court of Appeals, plaintiff agrees not to seek a litigated determination of any remaining unresolved factual or legal issues. On these bases, both the plaintiff and defendants consent to the entry of this Order. Accordingly, it is

ORDERED, ADJUDGED, AND DECREED that the defendants Havens Realty Corporation (herein-

after referred to as "Havens") and Rose Jones are hereby permanently enjoined from violating the terms of the Fair Housing Act of 1968 and the Civil Rights Act of 1866. It is further

ORDERED, ADJUDGED, AND DECREED that the terms and provisions of Sections I and II of this Consent Order shall remain in full force and effect for three (3) years from the date of entry of this Order, at which time the provisions hereof shall expire automatically; provided, however, that if the Court finds that the defendants materially violate any of the provisions of Sections I and II of this Order, or the injunctive provisions hereof, the Court will determine appropriate relief therefor, including possible extension of Section I and II beyond the date Sections I and II would otherwise terminate.

I. RENTAL PROCEDURES

It is further ORDERED, ADJUDGED AND DECREED that within the time periods specified below, Havens shall implement the following procedures with regard to the rental of apartments at its Camelot Townhouse and Colonial Court complexes.

A. Beginning not later than thirty (30) days from the date of the entry of this Order, Havens shall establish and thereafter continuously maintain and display in its rental office, in a conspicuous location, at all times, a current "Apartment Availability" display (wording and form attached hereto as Exhibit A), indicating the types of rental dwellings which it knows or believes are currently available for rent and which it anticipates will become available. Information concerning these availabilities will be made known, whenever possible, to persons inquiring by telephone about apartments at Colonial Court or Camelot Townhouse. In addition, Havens shall maintain a Rental Availability Activity Record for each

of its complexes (wording and form attached as Exhibit B), which shall indicate, by apartment number, on a continuous basis, in a narrative form, such information that becomes known to Havens regarding actual or anticipated dates upon which such apartment will or may become available for rent. When an apartment is leased, the narrative will state the date and time the lease was signed and the name and race of the lessee. Finally, Havens will post in a conspicuous location, or prepare and have available for distribution to all persons who submit an application for an apartment, a statement of criteria and procedures employed by it in approving or disapproving applications. Although such statement shall disclose what criteria are utilized by Havens, it is not required that it disclose the specifics of such criteria that would enable applicants or potential applicants to complete an application with information with actual knowledge of whether the application will be accepted by Havens. For example, if Havens customarily requires that rental payments not exceed a percentage of gross or net income, Havens shall so state but Havens is not required to disclose what that percentage is. Any restrictions that may be applicable to particular dwelling units (*e.g.*, no pets allowed in a particular section) shall also be stated. Every two weeks, Havens shall mail two copies of the information which is reflected on the display at the end of the business day as well as two copies of the Rental Activity Availability Record to the Virginia Real Estate Commission ("the Commission"). Havens shall also mail a copy of its initial rental criteria disclosure statement to the Commission, showing the specifics of the rental criteria, and thereafter provide the Commission with notice of any changes or

modifications thereto. The rental disclosure statement showing the specific rental criteria shall be for the Commission's and Housing Opportunity Made Equal's (HOME's) confidential use and shall not be disseminated to the public.

B. Beginning not later than thirty (30) days from the date of the entry of this Order, Havens shall commence the use of an "Office Registration Form" (wording and form attached as Exhibit C) to obtain information set forth on the form from persons visiting its rental office and inquiring as to the availability of apartments. Havens shall indicate on all completed forms the race of the applicant by marking a "W" for white persons, a "B" for black persons, and an "O" for persons of other or unknown races. Havens is not required to have the Office Registration Form completed by all persons visiting its rental office and inquiring as to the availability of apartments, and it need only request such persons to complete same. Havens shall accumulate copies of the Office Registration Forms and forward two copies quarterly to the Commission. Upon not less than five (5) working days notice to Havens, the Commission shall have the right to be provided with copies, at the Commission's expense, of rental applications and executed leases, provided, however, that the Commission shall only be so entitled if it makes such request by either (i) identifying the name of the current tenant(s) in respect of whom it desires a copy of the rental application(s) or executed lease(s), or (ii) identifying the apartment number(s) in respect of which it desires a copy of the rental application(s) or executed lease(s) pertaining to the then current tenant or the tenant occupying that apartment immediately prior to the then current tenant. The request for such information shall be made to the

Commission by HOME. HOME shall make such requests only when it has a need for such individual applications and executed leases, and HOME shall not make such requests merely for the purpose of collecting such information and documents merely in the event that it may, at some time in the future, have a need for them.

II. DISPLAY OF FAIR HOUSING STATEMENT

It is further ORDERED, ADJUDGED AND DECREED that Havens shall include in all public advertisements of any dwellings offered for rent that are published more than thirty (30) days after the date of the entry of this Order, on all rental applications, leases, and on the "Apartment Availability" display the following statement in bold-face type:

> "HAVENS REALTY CORPORATION IS AN EQUAL HOUSING OPPORTUNITY REALTOR";

provided, however, that the statement shall not be required to be used in advertisements that are smaller than four column inches. Havens shall also display the fair housing poster that is recommended in the United States Department of Housing and Urban Development Guidelines, 37 Fed. Reg. 6700, in a conspicuous location in its office, and the Equal Housing Opportunity logotype and statement on its rental signs as provided in 37 Fed. Reg. 6700.

III. DAMAGES

It is further ORDERED, ADJUDGED AND DECREED that not later than 30 days from the date of this Order Havens shall deposit in the Court registry the sum of Thirteen Thousand Five Hundred Dollars ($13,500) to be distributed among all claimants whose Proof of Claim forms are approved in the manner set forth below.

Claimants shall be required to file Proof of Claim forms not later than sixty days from the date of the approval hearing on this Order. Each Proof of Claim form will be reviewed by counsel for HOME and counsel for Havens. The validity of each claim shall be established presumptively by a *prima facie* showing of racial discrimination. For purposes of this Consent Order, this standard will be met by a claimant's sworn statement that he sought housing information during the period in question about the Camelot Townhouse/Colonial Court Complex but was told that there were no apartments available or that there were apartments available only at Colonial Court or that he sought housing information about Camelot Townhouse only but was told that there were no apartments available or that there were apartments available only at Colonial Court. Havens shall have the opportunity to dispute such claims by coming forward with evidence of a neutral (nondiscriminatory) justification for its actions. The claimant shall then have the opportunity to rebut Havens' evidence.

Not later than thirty days from the final date for submission of Proof of Claim forms, counsel shall submit to the United States Magistrate a detailed report of their findings including a descriptive list of all Proof of Claim forms reviewed, the manner in which the review was conducted, and the disposition (with explanation) of each claim. Any claim which is rejected or objected to, or as to which any question is raised, by either designee, will be referred to the Magistrate for such further proceedings as he may deem appropriate to determine its validity. Such proceedings may include, *inter alia*, the taking of evidence, the holding of hearings, and the submission of written statements. Claimants will be promptly informed as to the disposition of their claims or,

where applicable, of their referral to the Magistrate.

At the conclusion of the claims review process, the $13,500 fund will be divided pro-rata among all claimants whose claims have been approved, provided, however, that in no event shall any claimant be entitled to receive in excess of $1,000. Named plaintiff Paul Allen Coles will receive $2,250 which is not included in the $13,500 fund. If, after distribution of the fund, there are funds remaining, such funds shall be returned to Havens.

The Court, in its discretion, may order a final report to be submitted by the Magistrate detailing the ultimate disposition of all claims and funds.

IV. CONTACTING AND COUNSELING PROSPECTIVE CLAIMANTS

In addition to the notice procedures prescribed by the Court, HOME or its representatives may contact persons whom it believes have cause to assert claims pursuant to this Order. Such contacts shall be limited to identifying prospective claimants and then to delivery in person, by posting, by mail or by reading on the telephone the following notice:

> Dear ————————:
>
> We are writing to inform you that you may file a claim for money damages in a housing discrimination lawsuit.
>
> The lawsuit was filed in January 1979 in the United States District Court in Richmond by Paul Allen Coles against Havens Realty Corporation. The plaintiff claimed that Havens Realty discriminated in the rental of apartments at its Camelot Townhouse and Colonial Court apartments. Havens Realty has agreed to pay the total sum of $13,500 to be divided among per-

sons who can come forward with sworn claims proving racial discrimination by Havens Realty. Each person proving a claim would be limited to $1,000. It is not necessary for you to have rented an apartment from Havens Realty in order to prove a claim.

If, since January 9, 1977, you have sought apartments at the Colonial Court and Camelot Townhouse apartments and were told by Havens Realty either that nothing was available or that apartments were available only at Colonial Court, you may have a claim for discrimination. If this is the case and you are interested in filing a claim, contact James F. Stutts, attorney for the plaintiff, at 121 Shockoe Slip, Richmond, Virginia 23219, telephone 643-5192.

Havens shall pay actual attorneys fees in the total aggregate amount of $750 to McSweeney, Stutts & Burtch, for advising any and all claimants with respect to the filing of claims pursuant to this Order. No other attorneys fees incurred by any claimant shall be awarded.

V. ATTORNEY FEES

It is further ORDERED, ADJUDGED AND DECREED that the defendants shall pay to the plaintiff's counsel, in addition to the sum specified in Section IV herein, the total sum of Seventeen Thousand Five Hundred Dollars ($17,500) as attorney's fees.

VI. RELEASE AND DISMISSAL

The payment of the foregoing amounts by the defendants shall constitute a full release, accord, and satisfaction by all plaintiffs, including those that may

hereafter be joined by the Court pursuant to the class certification of this action, for all damages, costs, expenses, and fees incurred in all negotiations and/or other activities arising out of the Complaint filed herein.

Except for Sections I and II of this Order which require affirmative duties on the part of the defendants, this action shall stand dismissed. ORDERED this 17th day of February 1980.

/s/ D. Dortch Warriner
United States District Judge

THE PARTIES CONSENT TO THE ENTRY OF THIS ORDER:

For the Plaintiff:

/s/ James F. Stutts
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For the Defendants:

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APPENDIX B

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF VIRGINIA
RICHMOND DIVISION

Civil Action No. 79-0024-R

PAUL ALLEN COLES

v.

HAVENS REALTY CORPORATION, ET AL.

Filed Feb. 13, 1981

ORDER

In accordance with the memorandum this day filed, the following class will be CERTIFIED pursuant to Rule 23(b)(2) of the Federal Rules of Civil Procedure:

> A class composed of all black persons who may have been injured monetarily by the alleged racial steering practices of Havens Realty Corporation or Rose Jones, on or since 9 January 1977.

The Court hereby designates plaintiff Paul Allen Coles to act as representative for this class.

Further, the following subclass will also be CERTIFIED:

> A subclass composed of all black persons who may have been injured monetarily by the alleged

racial steering practices of Havens Realty Corporation or Rose Jones, on or since 13 July 1978.

The Court hereby designates plaintiff Paul Allen Coles to act as representative for this subclass.

The parties are DIRECTED to confer toward the goal of proposing a notice procedure for approval by the Court as contemplated in Rule 23(c)(2) of the Federal Rules of Civil Procedure to ensure the protection of absent parties who stand to be bound by a final judgment in the instant action. Such proposal shall be tendered to the Court within 15 days of the date of this order.

And it is so ORDERED.

/s/ D. Dortch Warriner
United States District Judge

Date: 13 February 1980

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